SCANED/ UPLOADED BY :-
SANJAY & YOGESH
ON DATED

992 / 94

XII-188 (Jail)
C. J. P. R. 2,000-9-84

In the Court of JABALPUR
Received on 2 JUL 1994
Registration No. 557
Madhya Pradesh High Court Bench (Circuit)

APPEAL OF PRISONER

No 535/92 Name भैरू साम्

Father,s name [illegible] Residence [illegible] Age ३० वर्ष

Sentenced to आजीवन कारावास on 17/12/1993 ST NO 29/93

Under section 302 भा. द. वि. by द्वितीय अतिरिक्त सत्र न्यायाधीश रामगढ़ (म.प्र.)

It is explained to the prisoner the if he states or wishes to be represented by legal practitioner the Appelate court will not proceed with the base for seven days unless the legal practitioner appears if the legal practitioner does not appear with in seven days he may not be heard at all if the prisnor states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any leagl practitioner who should appear,

1 Date of Application for copy of Judgement 17/12/1993

2 Date of which copy received 10/6/1994

3 Date on which Apoeal sent

4 Whether the prisoner wishes to be represented or ~~not~~ – yes/No.

No. 535/92 Name भैरू साम्/० श्रवणा

Continued in जेल्स Jail रामगढ़ (म.प्र.)

No. 447 /law/ dated 27/6/94 198

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ आदिवर पैनीयक मजि. 3-रा आ.वर्ग रामगढ़ (म.प्र.)

together with a copy of Judgement or order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent Jail अधीक्षक, केन्द्रीय जेल, रायपुर. (म. प्र.)

Date of receipt in C. J. M.'s Office

Date of receipt of record to accompany 17-12-93 to 27-6-94

Memo of Appeal of the Appellate Court

No. Dated 198

Forwarded to the

C. J. Magistrate

14-Dec
31-Jan
28-Feb
31-Mar
30-April
31-May
27-June
182 days
60 days
122 days

Date of receipt in Appliate Court

(P. T. O.)

(10)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. 992/94 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 992/1994

Appellant : Naihar Sai

Vs.

Respondent : State of Madhya Pradesh

Shri Akhil Mishra, learned counsel for the appellant.

Shri U.N.S.Deo; learned Additional Public Prosecutor with Shri G.K.Beriwal, learned Dy. A.G. for the respondent/State.

ORAL JUDGMENT
(17.01.2006)

Per L.C. Bhadoo, J

By this appeal accused/appellant Naihar Sai has questioned the legality of the judgment of conviction and order of sentence dated 17.12.93 passed by Second Additional Sessions Judge, Raigarh in Session Trial No. 27/93 whereby learned Additional Sessions Judge after holding accused/appellant guilty for the commission of murder of Mukit Ram under Section 302 of the IPC sentenced him to undergo Imprisonment for life. Accused/appellant is in custody since 01.07.1992.

2. Case of the prosecution is that Chaitram lodged a report (P.1) in police station Dharamjaigarh to the effect that a day before thereto at about 5.30 p.m. when Mukit Ram was at his residence, accused Naihar Sai and his

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मामला क्रमांक C.A. No. 992/94 सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

father Shivnath came with axe, entered the house of Mukit Ram. They dragged him out of the house and said that he had given the agricultural field for two years in lieu of Rs. 400/- to them but he had took back the same only after one year, therefore he should give interest on the amount on which Mukit Ram said that since he had returned the money, he would not pay the interest. Thereupon Shivnath caught hold of Mukit Ram with both hands and asked Naihar Sai to murder Mukit Ram, on which Naihar Sai attacked Mukit Ram with the axe on his neck as a result of which Mukit Ram fell down on the ground. Thereafter Naihar Sai again assaulted Mukit Ram with axe on his neck. Shivnath also assaulted Mukit Ram with the axe on his right shoulder as a result of which Mukit Ram succumbed to the injuries sustained by him.

3. On receiving this information S.H.O. Police Station Dharamjaigarh registered the FIR (P-1) for the commission of an offence under Section 302/34 of the IPC and proceeded for the scene of occurrence from where he took into possession plain soil under P-2. The weapon of offence stained with blood was also taken into possession under P-3. Panchnama of the body of Mukit Ram (P-4) was prepared. The other axe was taken into possession under P-5. Site plan P-7 was also prepared. Body of Mukit Ram was sent for post mortem examination to Primary Health Centre, Dharamjaigarh where Dr. P.L.Bodalkar (P.W.-11) conducted the post mortem and prepared post mortem report P-9 and opined that deceased died due to shock and hemorrhage as a result of excessive internal and external hemorrhage. The death of the deceased was homicidal in

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

nature. After investigation the charge sheet was filed in the Court of Judicial Magistrate First Class, Dharamjaigarh against accused/appellant Naihar Sai as the accused Shivnath had already expired. Learned JMFC, Dharamjaigarh in turn committed the case to the Court of Session Judge, Raigarh from where Additional Sessions Judge, Raigarh received the case on transfer for trial.

4. Prosecution in order to establish the charge examined as many as 12 witnesses. Statement of the accused was also recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and pleaded innocence and false implication in the case.

5. Learned Additional Sessions Judge after hearing learned Additional Public Prosecutor and counsel for the accused/appellant convicted and sentenced the appellant as mentioned in paragraph one of the judgment.

6. We have heard Shri Akhil Mishra on behalf of the accused/appellant and Shri U.N.S.Deo, Additional Public Prosecutor and G.K.Beriwal, Dy. A.G. on behalf of the State.

7. The fact of homicidal nature of death of deceased Mukit Ram is not in dispute. Learned counsel for the accused/appellant argued that P.W.1 Chaitram has stated in his evidence that he was present in the kitchen garden at the time of incident whereas in the police diary statement there was no such statement, in which he has simply said that he was in the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

house preparing bidi. He also argued that P.W.2 Shiv Kumar has also not witnessed the crime.

8. On the other hand Shri U.N.S.Deo, Addl. Public Prosecutor had supported the impugned judgment of conviction and sentence passed by the trial Court.

9. P.W.1 Chaitram is the person who lodged the report (P-1) in the police station has stated that at the time of the incident he was in the Kitchen garden and Mukit Ram was sleeping. Naihar Sai and Shivnath came there and entered the house of Mukit Ram and both dragged him out of the house. Shivnath caught hold of Mukit Ram with both hands and Naihar Sai attacked him with axe on his neck. He attacked twice and thereafter Shivnath also attacked Mukit Ram with axe as there was some dispute between Mukit Ram and the accused persons regarding agricultural land. The above evidence has been corroborated by P.W.2 Shiv Kumar in material particulars. He has also stated that both the accused persons dragged Mukit Ram from the house, Shivnath caught hold of Mukit Ram and Naihar Sai attacked on his neck with axe. The discrepancy pointed out by the counsel for the appellant is minor one as the evidence of Chaitram and Shiv Kumar are corroborated with each other. Their evidence further stands corroborated by the First Information Report and also by the extra judicial confession made by the accused before Kirtan Das (P.W.-6) the village Kotwar who has stated that in the evening he was at his residence when Naihar Sai came with the axe to his

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

house and stated that he has committed murder of Mukit Ram upon which, he went along with Naihar Sai to the police station and police took into possession the axe under P-5.

10. In view of the above evidence we do not find any substance in the arguments of the learned counsel for the appellant as it is established that the appellant was the author of the fatal injuries which were caused on the neck of the deceased and death was the direct result of the same. Therefore we do not find any illegality and any infirmity in the impugned judgment of the triat Court and there is no ground to interfere with the findings recorded by the trial Court. The appeal being devoid of substance is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

YOGENDRA SINGH KANWAR
Digitally signed by YOGENDRA SINGH KANWAR
Date: 2025.02.06 11:56:10 +0530

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